CP 400 (7)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 450 / 2004

Petitioners : 1. Union of India through the General Manager South East Central Railway, Bilaspur-(C.G.)

2. The Divisional Railway Manager, South East Railway, Raipur-(C.G.)

3. The Chief Personal Officer, South East Railway, Bilaspur-(C.G.)

4. The Divisional Personal Officer, South East Railway, Raipur-(C.G.)

P. R. No. 1449/04
Presented by Shri S. P. Sahu
dated 09.03.04

Versus

Respondents : 1. A. Aloysius R/o 1 / 1945 Near Catholic Church, G.E.Road, PO. : Tathiband, Tahsil And Dist : Raipur-(C.G.)

2. To Shri. M.Gopalan Retired Station Superintendent Grade-I, 58 Risali Sector Bhilai, Dist : Durg-(C.G.)

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

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**HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR**

**(Division Bench)**

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**CORAM : Hon'ble Shri A.K. Patnaik, CJ**
**& Hon'ble Shri Satish K. Agnihotri, J.**

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**WRIT PETITION NO. 450 OF 2004**

Union of India & Others

Versus

A. Aloysius & Another

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Present: Mr. Vinay Harit, Standing counsel for the petitioners.

Respondent No.1 present in person.

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**ORDER**
**(Passed on 12th May 2005)**

The following Order of the Court was passed by **A.K. Patnaik, CJ: -**

This is a writ petition filed under Article 226 / 227 of the Constitution of India by the petitioners challenging the order dated 25.07.2003 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in O.A.No.732 of 1998 and the order dated 09.01.2004 passed by the said Tribunal in Review Petition filed by the petitioners against the said order dated 25.07.2003.

2. The facts briefly are that the respondent No.1 was initially appointed as Assistant Station Master in the South Eastern Railways on 08.06.1957. Respondent No.2 Mr. M. Gopalan was initially appointed as Assistant Station Master with effect from 22.06.1960 in the South Eastern Railways. Prior to 1983 there were two channels of promotion from the post of Assistant Station Master. The Assistant Station Master had the option to choose for further promotion either in Assistant Station Master channel or in the Station Master channel. Respondent No.1 opted promotion in the Assistant Station Master channel while respondent No.2 opted promotion in the Station Master channel. Thereafter, respondent No.2 was promoted to the post of Station Superintendent Grade-II with

effect from 01.08.1982/01.08.1983 and also as Station Superintendent Grade-I with effect from 01.03.1993. Respondent No.1 filed Original Application No.723 of 1998 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur, making a grievance that although he was senior to respondent No.2 as Assistant Station Master, he was not promoted as Deputy Station Superintendent and Station Superintendent Grade-II w.e.f. 01.08.1982 / 01.08.1983, whereas respondent No.2 was given promotion as Deputy Station Superintendent and Station Superintendent Grade-II w.e.f. 01.08.1982 / 01.08.1983 and was also given promotion as Station Superintendent Grade-I w.e.f. 01.03.1993 and the respondent No.1 retired from service on 31.08.1994. By the judgment dated 25.07.2003, the Tribunal found that in the final seniority list promulgated on 09/12.07.1994 for the post of Station Superintendent Grade-II respondent No.1 had been placed at Sl. No.53 while respondent No.2 had been placed at Sl. No.61. The Tribunal also found that no separate seniority list of respondents 1 & 2 indicating that Assistant Station Master Group was different from the seniority list of Station Master Group was shown. The Tribunal further found that it was not the case of the petitioners before the Tribunal that respondent No.1 was not found fit for promotion either to the post of Station Superintendent Grade-II w.e.f. 01.08.1982/01.08.1983 or to the post of Station Superintendent Grade-I w.e.f. 01.03.1993. The Tribunal accordingly directed that since respondent No.2 was promoted to the post of Station Superintendent Grade-II w.e.f. 01.08.1982 / 01.08.1983 and to the post of Station Superintendent Grade-II w.e.f. 01.03.1993, respondent No.1 who was senior to respondent No.2 was also entitled to promotion with effect from the said dates as well as all consequential benefits at par with his next junior respondent No.2 Mr. M. Gopalan. Paragraphs 11 & 13 of the said order dated 25.07.2003 of the Tribunal passed in O.A.No. 732 of 1998 are quoted herein below:

> "11. The admitted facts of the case are that the final seniority list was promulgated on 9-12.7.94 for the post of SS Grade-II in the scale Rs.2000-3200 wherein, applicant is at Sl.No.53 and Shri Gopalan (Private Respondent) is at Sl. No.61. The official respondents have not referred to any corrigendum to the said seniority list or any other order showing that Shri M. Gopalan became senior to applicant. We have also not been shown any further separate seniority list indicating that ASM group was having different seniority list than SM group. The learned counsel for respondent has also not been able to point out any such rule. The

inescapable conclusion is that the Seniority List (Annex.A/4) was the final seniority list and it contains the names of applicant and that of the respondent No.5. That is precisely the reason to have a comparison of applicant's position vis-à-vis the said Shri Gopalan. It is also not the case of respondents that applicant was not found fit for promotion either to the post of SS Grade-II w.e.f. 1.1.83 or to the post of S.S. Grade-I w.e.f. 1.3.93. The applicant has retired from service on 31.8.94 and Shri Gopalan was promoted earlier to this date i.e. w.e.f. 1.3.93. As is borne out from the records, as a matter of fact Shri Gopalan was promoted w.e.f. 1.3.93, might be that he has been given promotion on 7.1.97 at par with his juniors, we do not find any reason whatsoever as to why applicant's case has not been considered despite the fact that he was senior to Shri Gopalan and have no other obstruction for granting benefit of promotion as prayed in this O.A.

12. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

13. The upshot of the aforesaid discussions is that the Original Application has much force and substance and it stands allowed. The applicant shall be entitled for promotion in the scale ofRs.550-750(RS) as Dy. Station Superintendent and in scale Rs.700-900 (RS) as Station Superintendent Grade-II w.e.f. 1.8.82 / 1.8.83 and also as Station Superintendent in Grade-I in the scale of Rs.2375-3500(RPS) w.e.f. 1.3.93, with all the consequential benefits at par with his next junior Shri M. Gopalan (Respondent No.5). The retiral benefits as also the pension shall also be revised accordingly. The official respondents are directed comploy with these orders and extend due benefits to the applicant within a period of three months from the date of receipt of a certified copy of this order. Costs is made easy."

Thereafter, the petitioners filed a review petition against the said order dated 25.07.2003 and by order dated 09.01.2004 the Tribunal dismissed the said review petition holding that the scope of review is very limited and the ingredients envisaged under Order 47 of Code of Civil Procedure had not been fulfilled. Paragraph 5 of the said order dated 09.01.2004 is quoted herein below:

"5. As regards the seniority list which are now filed, it is seen that the reply to the Original Application was filed on 08.09.99 and incidentally there has been no change in the counsel appearing for the respondents and the same counsel has been representing the respondents throughout. If the records were maintained by the erstwhile Bilaspur Division and they were transferred only on 07.11.2003, to Raipur then it must have been available with the Bilaspur Division against whom the case being fought. Thus the contention that the relevant records could not be made

available at the time hearing of the case due to non-availability of the same with the applicants (respondents in the OA) herein falls to the ground. The scope of review is very limited and the ingredients envisaged under Order 47 of the CPC have not been fulfilled. In our view, there is absolutely no ground for review the order passed in the Original Applicant besides the fact that the review is not maintainable in the eye of law."

Aggrieved by the said two orders dated 25.07.2003 and 09.01.2004, the petitioner have filed this writ petition with a prayer to quash the same.

3. Mr. Vinay Harit, learned counsel appearing for the petitioners submitted that it is pursuant to the judgment dated 30.04.1990 of the Supreme Court in Civil Appeal No.2054 of 1990 and the order dated 14.05.1993 passed by Supreme Court in Contempt Petition Nos.190 & 195 of 1991 that the promotions were given to respondent No.2 by the petitioners and this aspect of the matter has not been considered by the Tribunal in the impugned judgment and order passed in Original Application and the Review Petition.

4. Respondent No.1 who appeared in person, on the other hand, submitted that respondent No.2 was all through junior to him and the Supreme Court in the said judgment dated 30.04.1990 and in the said order dated 14.05.1993 passed in Civil Appeal No.2054 of 1990 and Contempt Petition Nos.190 & 195 of 1991 respectively has nowhere directed that persons who were senior to respondent No.2 were not to be given any promotion if respondent No.2 were to be given promotion. He further submitted that by order dated 31.10.2003, the Divisional Personnel Officer, South East Central Railway, Raipur has already complied with the impugned judgment passed by the Tribunal in O.A.No.732 of 1998 dated 25.07.2003, but the financial benefits for the promoted posts of Dy. Station Superintendent, Station Superintendent Grade-II and Station Superintendent Grade-I have not been given to him.

5. We have perused the judgment dated 30.04.1990 passed in Civil Appeal No.2054 of 1990 and the order dated 14-05-193 in Contempt Petition Nos.190 and 195 of 1991 and we find that by the said judgment and order the Supreme Court has directed the petitioners to grant promotional benefits to those 204 Station Masters who had exercised

option before 1983 in the manner as it would have been if option had not been abolished in accordance with the earlier procedure provided they fulfill the other requirements because the Supreme Court was of the view that the said 204 Station Masters although had under-taken the responsibilities as Station Master had been made to suffer on account of denial of promotion. By the said judgment dated 30.04.1990 no direction has been given to the petitioners not to consider the claims of persons who were senior to the said 204 Station Masters. Hence, even if the respondent No.2 was given promotion to a higher grade pursuant to the judgment dated 30.04.1990 and the order dated 14-05-93 of the Supreme Court, on this ground alone, the respondent No.1 who was senior to respondent No.2 as found by the Tribunal could not be denied promotion to the higher grade, when respondent No.2 had been given such promotion to the higher grade.

6. That apart, the order dated 31.10.2003 passed by the Divisional Personnel Officer, South East Central Railway, Raipur on which respondent No.1 has placed reliance is quoted herein below:

"S.E. C. RAILWAY

Office of the
Divl. Personnel Officer,
Raipur

MEMORANDUM No.Optg/10/03 Dt.31-10-03

In obedience to Hon'ble CAT/JBP's judgment delivered on 23.7.2003 in OA 732/98 in the matter of A. Alloyuis vs. UOI & Others, Shri A. Alloyuis, Retd. SS-II/Kumhari is promoted as

Dy. SS(Scale 550-750) IIIrd. PC w.e.f. 1.8.82/1.8.83

Station Supdt(Scale 700-900) IIIrd. PC w.e.f. 1.8.82/1.8.83
II

Station Supdt-I Scale 2375-3500/- w.e.f. 1.3.93
IVth. PC

With all consequential benefits at par with his most junior Shri M. Gopalan. He is also entitled for retiral benefits.

Divisional Personnel Officer
S.E.C. Rly/ Raipur

No.E/FB/R/Court/CAT/JBP/OA/732/98 Dt.31-10-03"

It will be clear from the order dated 31.10.2003 that the impugned judgment of the Tribunal dated 25.07.2003 in O.A.No.732 of 1998 has been complied with by the petitioners and in the said order nothing has been mentioned that the compliance of the order dated 25.07.2003 of the Tribunal in O.A.No.732 of 1998 is without prejudice to the case of the petitioners that the Respondent No.1 was not entitled to the benefits of promotion granted to Respondent No.2.

7. Respondent No.1 has retired from service way back on 31.08.1994 and it will not be proper for this Court to reopen the case of respondent No.1 to promotion after his retirement at this stage. The matter should be closed and respondent No.1 should be given all his financial benefits as per the judgment of the Tribunal in O.A.No.732 of 1998 dated 25.07.2003 and in accordance with the order dated 31.10.2003 passed by the Divisional Personnel Officer, South East Central Railway, Raipur, quoted above. The amount of Rs.1,18,635/- (Rupees one lakh eighteen thousand six hundred and thirty five only) deposited with the Registry of this Court towards the said financial benefits together with interest, if any, accrued on the said deposit may be withdrawn by respondent No.1. We make it clear that the case of respondent No.1 will not be treated as a precedent while deciding the claims of all other officers who may be placed in the same position as respondent No.1.

8. With the aforesaid observations, the writ petition stands disposed of.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge